IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 235 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

COMMISSIONER OF INCOME-TAX

Versus

VISHASHRIMALI L KUNVERJI

Appearance:

1. INCOME TAX REFERENCE No. 235 of 1993
MR MANISH R BHATT for Petitioner No. 1
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 18/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE K.A.PUJ)

At the instance of the revenue, the following question of law is referred for the opinion of this Court:-

"Whether, the Appellate Tribunal is right in law and on facts in holding that donation received by the assessee trust of Rs.50,400/- is not income of the trust particularly when the said donation was received for a specific purpose for the construction of Ghati Wadi which was one of the objects of the trust ?"

2. The assessment year involved is the assessment year 1986-87. The assessee received an amount of Rs.50,400/- as donation towards construction of Ghati Wadi. Since the said amount was directly taken to the balance sheet, the Income-tax Officer treated the same as income and accordingly assessed the same since the donation was given for the construction of Ghati Wadi which was one of the objects of the trust.

3. The Deputy Commissioner of Income-tax (Appeals), however, was of the opinion that the amount had been received with a specific direction and that was for utilization as corpus and, therefore, it could not be treated as income of the trust under Section 12 read with Section 2(24)(iia) of the Act. The Deputy Commissioner of Income-tax (Appeals) relying upon the decision of the Income-tax Appellate Tribunal, Delhi Bench "A" in the case of Dharmapratistenam vs. ITO and the Income-tax Appellate Tribunal, Ahmedabad Bench in the case of Swetamber Murtipujak Jain Sangh, Jamnagar allowed the claim of the assessee. The Tribunal has also relied on these orders and decided the matter in favour of the assessee.

4. Being aggrieved by the said order, the revenue has preferred the above reference before this Court.

5. Heard Mr Manish R Bhatt, the learned senior standing counsel appearing for the applicant-revenue. No one appears on behalf of the respondent-assessee though the notice is duly served.

6. The issue involved in the present reference is squarely covered by our decision in the case of Commissioner of Income-tax, Rajkot vs. Shri Sthanakvasi Vardhman Vanik Jain Sangh, Jamjodhpur being Income-tax Reference No. 73 of 1993 which was decided by us today. For the reasons stated therein and the view taken by us therein, we are of the view that the Tribunal was right in holding that the donation received by the assessee-trust of Rs.50,400/- is not income of the trust particularly when the said donation was received for a

specific purpose for the construction of Wadi which was one of the objects of the trust. We, therefore, answer the question referred to us in the affirmative i.e. in favour of the assessee and against the revenue.

7. The reference is disposed of accordingly with no order as to costs.

(M.S. Shah, J.) (K.A. Puj, J.)

sundar/-